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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 HENRY G. LUKEN III,

10 Plaintiff,

11 v.

12 CHRISTENSEN GROUP  
13 INCORPORATED, et al.

14 Defendants.

CASE NO. C16-5214 RBL

ORDER ON MOTION FOR  
PROTECTIVE ORDER [DKT. 98]  
AND MOTION TO COMPEL [DKT.  
105]

15 THIS MATTER is before the Court on Defendants’<sup>1</sup> Motion for Protective Order [Dkt.  
16 98] and Plaintiff Henry G. Luken First Motion to Compel Discovery [Dkt. 105]. Defendants seek  
17 a protective order, claiming Luken’s forty-seven pages of interrogatories and document  
18 production requests are vague, overly broad, impose an undue discovery burden, and violate the  
19 Federal Rules of Civil Procedure as well as the Local Civil Rules governing discovery. Luken  
20 opposes the motion for protective order and seeks to compel Defendants’ responses to his  
21 interrogatories, requests for production, and subpoenas. Both sides criticize the tactics of the  
22 other for making the discovery process unnecessarily contentious.

23 <sup>1</sup> Christensen Shipyards, LTD and its (non-Luken) owners and officers are the defendants and  
24 counterclaimants in this case.

1 **I. BACKGROUND**

2 Luken was both a shareholder in and a customer of Christensen Shipyards, LTD (CSL), a  
3 Vancouver, WA based builder of luxury yachts. The arrangement was unsuccessful on all levels.  
4 CSL went into receivership in 2015 and Luken ultimately purchased its assets. This litigation  
5 involves complex claims between Luken and CSL and its owners and officers, trading  
6 allegations about why it all went wrong and who is financially responsible, to whom.

7 Discovery has been a protracted and antagonistic process. The Court has previously  
8 granted Defendants' motion to compel Luken to provide initial disclosures and produce  
9 documents [Dkt. 46] and has compelled Luken's responses to interrogatories [Dkt. 73]. The  
10 Court is again called upon to settle a completely avoidable discovery dispute.

11 **II. LEGAL STANDARD**

12 The Federal Rules of Civil Procedure and the Local Civil Rules for the Western District  
13 of Washington govern the discovery process. Fed. R. Civ. P. 26(b)(1) provides:

14 [p]arties may obtain discovery regarding any nonprivileged matter that is relevant  
15 to any party's claim or defense and proportional to the needs of the case,  
16 considering the importance of the issues at stake in the action, the amount in  
17 controversy, the parties' relative access to relevant information, the parties'  
18 resources, the importance of the discovery in resolving the issues, and whether the  
19 burden or expense of the proposed discovery outweighs its likely benefit.

20 The Local Civil Rules advise that "[t]he proportionality standard set forth in Fed. R. Civ. P.  
21 26(b)(1) must be applied in every case when parties formulate a discovery plan and promulgate  
22 discovery requests. To further the application of the proportionality standard in discovery,  
23 discovery requests and related responses should be reasonably targeted, clear, and as specific as  
24 possible." Local Rules, W.D.Wash. 26(f).

25 In circumstances where a party abuses the discovery process, Fed. R. Civ. P. 26(c)(1)  
26 permits a party from whom discovery is sought to move for a protective order to safeguard the

1 party from annoyance, embarrassment, oppression, or undue burden or expense. Conversely, a  
2 party may move to compel disclosure or a discovery response if an opposing party fails to  
3 provide the sought-after discovery. Fed. R. Civ. P. 37(a).

### 4 **III. ANALYSIS**

#### 5 **A. Defendants' Motion for Protective Order [Dkt. 98]**

6 Defendants argue that Luken's contention interrogatories are overly broad. Defendants  
7 estimate that responding to Luken's interrogatories and requests for production would take  
8 between 350 to 450 hours of attorney and paralegal time and would cost hundreds of thousands  
9 of dollars. Defendants contend that much of the information Luken seeks is already available in  
10 the detailed pleadings and in the discovery already produced.

11 Luken asserts that his interrogatories are proper because they ask relevant questions about  
12 Defendants' defenses and counterclaims, and that Defendants have no legitimate excuse for  
13 refusing to answer.

14 Numerous federal courts, including this one, have held that contention interrogatories  
15 which "systematically track all of the allegations in an opposing party's pleadings, and that ask  
16 for 'each and every fact' and application of law to fact that supports the party's allegations are an  
17 abuse of the discovery process because they are overly broad and unduly burdensome." *Lucero v.*  
18 *Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *see also Olson v. City of Bainbridge Island*, 2009  
19 WL 1770132, at \*4 (W.D. Wash. June 18, 2009) (upholding "overly broad" objection to  
20 contention interrogatory which requested "all facts and all evidence" supporting a particular  
21 allegation); *Advocare Int'l, L.P. v. Scheckenbach*, 2009 WL 3064867, at \*1 (W.D. Wash. Sept.  
22 24, 2009).

23 The Court has reviewed Luken's forty-seven pages of interrogatories and requests for  
24 production. Luken's blanket discovery requests are in fact overly broad and do not comport with

1 Rule 26's proportionality standard or Rule 33's limit on the number of interrogatories a party  
2 may serve. *See* Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 33(a)(1) ("a party may serve on any  
3 other party no more than 25 written interrogatories, including all discrete subparts.").<sup>2</sup> In  
4 Interrogatory No. 8, for example, Luken seeks the disclosure of "all material facts" supporting a  
5 particular claim. This "single" interrogatory contains seventeen subparts comprising almost four  
6 typed pages. Dkt. 99 at 23–26. In addition to violating the Federal Rules of Civil Procedure, this  
7 interrogatory does not meet the Local Civil Rules requirement that discovery requests be  
8 "reasonably targeted, clear, and as specific as possible." Local Rules, W.D.Wash. 26(f).

9 Defendants have already produced over eight terabytes of data comprising over 90,000  
10 pages of documents in discovery. Luken acknowledges that he has not even gone through the  
11 vast majority of discovery available to him, yet he seeks additional discovery through his overly  
12 broad contention interrogatories. Dkt. 105 at 13 n.6. The Court determines that Luken's  
13 interrogatories are neither proportional nor reasonably targeted, especially when considering the  
14 amount of discovery already available to him. Luken's contention interrogatories would subject  
15 Defendants to annoyance, undue burden, and expense far outweighing the likely benefit.  
16 Pursuant to Fed. R. Civ. P. 26(c)(1), the Court **GRANTS** Defendants' Motion for Protective  
17 Order [Dkt. 98] and **STRIKES** Luken's second set of interrogatories and the accompanying  
18 requests for production.

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22 <sup>2</sup> Luken directs each Defendant to answer all interrogatories, and then attempts to bypass Fed. R.  
23 Civ. P. 33 by provisionally assigning certain interrogatories to certain defendants, all the while  
24 suggesting that each defendant is responsible for all answers because Defendants are represented  
by the same law firm. Dkt. 99 at 2.

1 **B. Luken's Motion to Compel [Dkt. 105]**

2 Related to the same discovery breakdown, Luken moves to compel Defendants'  
3 compliance with eight specific requests for document production, subpoenas, ESI,  
4 interrogatories, and scheduling of depositions. Defendants argue that the motion is unnecessary  
5 and that Luken is moving for a blanket order compelling compliance with all of his discovery  
6 requests regardless of the sufficiency of Defendants' production. Defendants contend that  
7 Luken's attorney has not made any meaningful efforts to meet and confer with opposing counsel.

8 Having reviewed the parties' respective briefings, it appears that Defendants have  
9 sufficiently responded to the production requests that Luken seeks to compel compliance with.

10 The Court briefly summarizes each of Luken's eight requests and rules as follows:

- 11 • **Request No. 1** – Luken requests that the Court compel Defendants' compliance with  
12 the ESI discovery agreement, contending that Defendants have not identified the  
13 custodians of electronic records or the search terms used to examine those records.  
14 The record does not support this contention. Unlike Luken,<sup>3</sup> the Defendants are  
15 largely in compliance with the ESI discovery agreement, having identified custodians  
16 and produced voluminous amounts of ESI in this case. **DENIED.**
- 16 • **Requests No. 2 and 3** – Luken requests that the Court compel Defendants'  
17 compliance with his first and second sets of requests for production. Defendants  
18 assert that they have produced all relevant documents and are not knowingly  
19 withholding any non-privileged materials. **DENIED.**
- 19 • **Requests No. 4 and 5** – Luken requests the Court compel compliance with his  
20 subpoenas of former CSL attorneys Kit Jensen and Casey Marshall. Luken asserts  
21 that he has not received any substantive responses from Jensen or Marshall, and that  
22 any claim of attorney-client privilege between Jensen/Marshall and CSL is now  
23 controlled by Luken as the Director of CSL. Both Jensen and Marshall responded,

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24 <sup>3</sup> The Court has previously ordered Luken to comply with the Model Agreement Regarding the  
Discovery of ESI. Dkt. 46.

1 objecting to the extent that the subpoenas sought privileged materials or documents  
2 already under Luken's control. Dkt. 106-8; Dkt. 106-9. Defendants indicate that they  
3 have conferred with both Jensen, Marshall, and their e-discovery vendor to ensure  
4 that all relevant and non-privileged materials have been produced. **DENIED.**

- 5 • **Request No. 6** – Luken requests that the Court compel the Christensen Trust's and  
6 Defendant Curtin's response to his first interrogatory. Both the Trust and Ms. Curtin  
7 have subsequently served their responses, although Luken disputes the completeness  
8 and usefulness of those responses. **DENIED.**
- 9 • **Request No. 7** – Luken requests that the Court compel compliance with  
10 interrogatories 2 through 24 and his associated third set of requests for production.  
11 This request is the subject of Defendants' protective order discussed above and is  
12 **DENIED** in accordance with the grant of that protective order.
- 13 • **Request No. 8** – Finally, Luken seeks to compel Defendants to provide dates for  
14 depositions he wishes to take. Defendants contend that Luken has not noticed any  
15 depositions or accepted any of the deposition dates proposed. The Court expects that  
16 the parties will meet and confer to find mutually agreeable dates and times for  
17 depositions without the Court's continued intervention. **DENIED.**

#### 18 IV. CONCLUSION

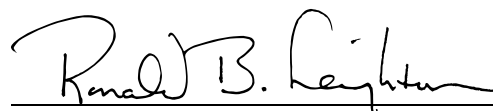
19 The Court's patience wears thin. If the Court is again called on to resolve an unnecessary  
20 discovery dispute, it will award attorney's fees to the prevailing party.

21 Defendants' Motion for a Protective Order [Dkt. 98] is **GRANTED.**

22 Luken's Motion to Compel Discovery [Dkt. 105] is **DENIED.**

23 IT IS SO ORDERED.

24 Dated this 15<sup>th</sup> day of November, 2017.



Ronald B. Leighton  
United States District Judge